

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT TACOMA

7 RICHARD L. RYNEARSON, III,)
8 Plaintiff,)
9 v.) 3:17-CV-05531
10 ROBERT FERGUSON, Attorney)
11 General of the State of)
12 Washington,) September 22, 2017
13 and,)
14 TINA R. ROBINSON,)
15 Prosecuting Attorney for)
Kitsap County,)
Defendants.)

VERBATIM REPORT OF PROCEEDINGS
BEFORE THE HONORABLE RONALD B. LEIGHTON
UNITED STATES DISTRICT JUDGE

PRELIMINARY INJUNCTION HEARING

APPEARANCES:

For the Plaintiff: GARRETT HEILMAN
Focal PLLC
900 First Avenue South
Suite 201
Seattle, Washington 98134

EUGENE VOLKH
UCLA School of Law
405 Hilgard Avenue
Los Angeles, California 90095

VENKAT BALASUBRAMANI
Focal PLLC
900 First Avenue South
Suite 201
Seattle, Washington 90095

For the Defendant
Robert Ferguson: DARWIN P. ROBERTS
Attorney General's Office
800 Fifth Avenue
Suite 2000
Seattle, Washington 98134

For the Defendant
Tina R. Robinson: IONE S. GEORGE
Kitsap County Prosecutor's Office
614 Division Street
MS-35A
Port Orchard, Washington 98366

1 MORNING SESSION
23 SEPTEMBER 22, 2017
45 THE COURT: Good morning.
67 THE CLERK: Rynearson versus Ferguson, C17-5531RBL,
8 Counsel, please make an appearance for the record.
910 MR. VOLOKH: Eugene Volokh representing Rynearson.
1112 THE COURT: Anyone over there?
1314 MR. BALASUBRAMANI: Mr. Balasubramani for Rynearson.
1516 MR. HEILMAN: Garrett Heilman for Plaintiff Rynearson.
1718 MR. ROBERTS: Darwin Roberts for the Office of
19 Attorney General.
2021 MS. GEORGE: Ione George, Kitsap County Prosecutor's
22 Office.
2324 THE COURT: This is on the motion for preliminary
25 injunction filed by plaintiff. I have reviewed all of the
memorandum. I have reviewed the declarations, the Findings
of Fact and Conclusions of Law.
2627 Given the history of the dispute, as painful as that
28 is, I am focused on the constitutionality issue. I know that
29 the Attorney General has arguments ex rel Younger, Young,
30 Younger abstention, collateral bar, all that. You can weave
31 that into your argument. I am most interested in the
32 substantive issue on the constitutionality of the statute.
33 That is just where I am thinking.
34

00:11:38 1 Mr. Volokh, if you are going to be the spokesman, you
00:11:42 2 are up.

00:11:43 3 MR. VOLOKH: All right. Your Honor, thank you very
00:11:48 4 much.

00:11:48 5 So the relevant statute provides in relevant part
00:11:53 6 that it is a crime to anonymously or repeatedly communicate
00:11:57 7 electronically to a third party, could be the public, could
00:12:01 8 be somebody else, with the intent to, among other things,
00:12:04 9 harass, torment or embarrass any person. We think that
00:12:09 10 cannot be constitutional.

00:12:10 11 If you think about much of what goes on these days
00:12:13 12 during the election, could be Candidate Trump might have
00:12:18 13 been, under this statute, guilty of cyberstalking
00:12:20 14 Secretary Clinton and vice versa. We think even as to
00:12:23 15 matters of purely private concern, the statute is
00:12:27 16 unconstitutional and overbroad. For example, if somebody
00:12:30 17 posts something online about how she broke up with her
00:12:33 18 boyfriend because he cheated on her, and she wants him to
00:12:35 19 feel embarrassed for how badly he treated her, but the
00:12:40 20 statute is not limited to matters of private concern, applies
00:12:44 21 to speech about --

00:12:50 22 THE COURT: Can you keep up with him?

00:12:50 23 MR. VOLOKH: My students have remarked the same in
00:12:54 24 class.

00:12:55 25 The statute equally applies to public figures and matters

00:12:59 1 of public concern. To give one example from the case law,
00:13:02 2 Hustler vs Falwell, that almost certainly was intended to
00:13:06 3 embarrass and torment Jerry Falwell. It wasn't online.
00:13:11 4 There was no online then. It was only one issue. Imagine if
00:13:14 5 it had been posted twice. That, too, would have been --
00:13:17 6 would have been covered by the statute, and that shows the
00:13:21 7 statute is substantially overbroad.

00:13:23 8 In the First Amendment substantial overbreadth
00:13:28 9 challenge, all we need to show is it applies to a substantial
00:13:30 10 range of constitutionally protected behavior. It may have a
00:13:35 11 legitimate scope, for example, as to threatening statements,
00:13:39 12 statements that are so intimidating as to be threatening.
00:13:42 13 True threats, we do not object to its application there or to
00:13:45 14 the word "intimidate" there.

00:13:47 15 The statute, we think we have shown, is substantially
00:13:52 16 overbroad because it covers a substantial range of speech.

00:13:55 17 Your Honor, I would be happy to go on, but I prefer to
00:14:00 18 answer any questions you have about this or about some of the
00:14:03 19 procedural issues in this case.

00:14:05 20 THE COURT: I have questions about the overbreadth.
00:14:11 21 We can do this in the round, and the defense can make their
00:14:15 22 arguments and you can get back up. It is a serious issue
00:14:24 23 about an innate argument. The substance of this case is, the
00:14:40 24 social media is painfully, painfully absurd. What we are
00:14:59 25 doing in our society with these rants from people who have

00:15:07 1 too much time on their hands and overactive fingers is tough,
00:15:16 2 tough to do. I have known you, and I have observed you in
00:15:24 3 the CACM Committee with your requests for access to PACER and
00:15:30 4 all that stuff, and I respect so much your work and that of
00:15:42 5 Mr. Roberts and Ms. Ione. It is a precious right. We have
00:15:54 6 to tread lightly on the contours of that right, but reading
00:16:13 7 the ramp up to the cyberstalking allegation is just painful,
00:16:30 8 painful.

00:16:31 9 I want to hear from Mr. Roberts and Ms. Ione, and then we
00:16:36 10 will have you back out.

00:16:38 11 Your point is that it is just vague, overly broad,
00:16:46 12 and it is not enforceable as constitutional.

00:16:51 13 I'll hear from Mr. Roberts.

00:16:53 14 MR. VOLOKH: Thank you.

00:16:56 15 MR. ROBERTS: Thank you, Your Honor.

00:16:58 16 With great respect to the Court and your interest in
00:17:01 17 the constitutionality issues, I feel like I would be remiss
00:17:05 18 on behalf of my client if --

00:17:07 19 THE COURT: You spent 80 percent of your brief on
00:17:12 20 those issues of why we shouldn't decide this.

00:17:17 21 MR. ROBERTS: Not just why you shouldn't decide this,
00:17:19 22 but there is no jurisdiction over the Attorney General. In
00:17:25 23 particular, the Ex parte Young argument. If what they are
00:17:31 24 requesting is an injunction against the Attorney General
00:17:34 25 enforcing the statute, they cannot get that. We lack

00:17:37 1 jurisdiction to enforce it. Our jurisdiction would depend on
00:17:42 2 contingent future events, and under the line of Ninth Circuit
00:17:46 3 cases we cited, the Southern Pacific case, the Van de Kamp
00:17:49 4 case, it is just not there. On that grounds, the Attorney
00:17:53 5 General should be out.

00:17:56 6 THE COURT: How about Planned Parenthood?

00:17:59 7 MR. ROBERTS: Planned Parenthood -- I realize this
00:18:02 8 came up late in the briefing, that's why I prominently cited
00:18:06 9 Planned Parenthood because I didn't want there to be any
00:18:09 10 suggestion I was hiding negative authority.

00:18:11 11 Planned Parenthood is distinguishable because the
00:18:14 12 Idaho AG stands in a different position. They can deputize
00:18:18 13 themselves. Although in both states the governor can
00:18:21 14 deputize the AG, the court cited that as the distinguishing
00:18:33 15 factor. Here, you have to look at whether there is any
00:18:34 16 likelihood of that happening. It is such a rare event in the
00:18:37 17 state of Washington the governor deputizes the AG to take
00:18:40 18 criminal jurisdiction. Planned Parenthood should not control
00:18:47 19 this case. On that ground, they cannot obtain an injunction
00:18:52 20 against the Attorney General's Office.

00:18:54 21 Beyond that, the Court does also, on Ex parte Young
00:19:00 22 grounds, need to look at whether the Kitsap County
00:19:04 23 Prosecuting Attorney's Office has made adequate threat of
00:19:09 24 enforcement to trigger jurisdiction over the constitutional
00:19:11 25 question here. I appreciate the Court's concern about the

00:19:14 1 constitutional questions. Obviously the state courts have
00:19:17 2 questions about the constitutionality of this statute as
00:19:20 3 well.

00:19:21 4 The state courts can do things this Court can't.
00:19:24 5 They can adopt limiting constructions of the statute as the
00:19:28 6 Washington Court of Appeals did in the Kohonen case. They,
00:19:32 7 themselves, can declare the statute unconstitutional as they
00:19:35 8 did in the Dodd case.

00:19:37 9 These issues, Your Honor, are firmly teed up for the
00:19:41 10 Kitsap County Superior Court right now with no question of
00:19:45 11 standing, no question of abstention, no Article III issues.

00:19:50 12 Mr. Rynearson can go into court and file these
00:19:55 13 questions wherever. I don't think there is any suggestion
00:19:57 14 that the Washington state courts are less sympathetic or more
00:20:03 15 hostile to First Amendment overbreadth claims than this Court
00:20:07 16 would be.

00:20:08 17 If this Court finds that the e-mail correspondence from
00:20:14 18 the Kitsap County Deputy Prosecuting Attorney does not
00:20:18 19 satisfy the standard for threatened enforcement under Ex
00:20:23 20 parte Young, there is no jurisdiction. Both the Prosecutor's
00:20:28 21 Offices have 11th Amendment immunity. They cannot raise the
00:20:31 22 overbreadth argument without jurisdiction. That is the Dream
00:20:36 23 Palace vs Maricopa County case.

00:20:37 24 I believe Ms. George may want to address further the
00:20:41 25 issue of why that e-mail does not indicate an intent by the

00:20:49 1 Prosecuting Attorney's Office, who, as plaintiffs have
00:20:52 2 emphasized, is the defendant here, why the Prosecuting
00:20:55 3 Attorney's Office does not have intent to enforce the statute
00:20:58 4 against Mr. Rynearson.

00:21:03 5 THE COURT: All right.

00:21:05 6 MR. ROBERTS: I would be happy to address Younger
00:21:08 7 because I don't think it is -- I think it is an important
00:21:12 8 consideration here. I think principles of comity and
00:21:16 9 federalism should apply, particularly when you don't have any
00:21:20 10 indication the state -- when you don't have any indication
00:21:23 11 the state forum is an inadequate forum for this question.

00:21:31 12 It does appear to me that the effort by the
00:21:37 13 plaintiffs to enjoin the prosecutors, who would ultimately be
00:21:42 14 responsible for enforcing any violations of the protection
00:21:45 15 order from enforcing the statute that is the predicate for
00:21:49 16 the enforcement order. I mean, I gather we are not talking
00:21:53 17 here about whether Mr. Rynearson can engage in online speech
00:21:58 18 about President Trump or Former President Obama. We are
00:22:02 19 talking about whether he can engage in speech about
00:22:05 20 Mr. Moriwaki, and what will happen if he resumes engaging in
00:22:09 21 speech about Mr. Moriwaki.

00:22:11 22 I cannot imagine a circumstance in which the
00:22:14 23 plaintiffs obtained an injunction against the Kitsap County
00:22:18 24 Prosecuting Attorney's Office barring them from prosecuting
00:22:21 25 Mr. Rynearson under this statute and him not saying, in the

00:22:25 1 protection order appeal in the superior court, this doesn't
00:22:30 2 affect me whatsoever. As they said in their brief, you know,
00:22:33 3 it is persuasive authority on you, but we will have to
00:22:36 4 relitigate the entire question of the constitutionality of
00:22:39 5 the statute. He is going to argue it has the effect of
00:22:42 6 kicking the legs out from under the prosecution, Your Honor.

00:22:47 7 THE COURT: You concede the State has questions about
00:22:54 8 the overbreadth of the statute?

00:22:57 9 MR. ROBERTS: Litigants in the Washington courts have
00:23:01 10 raised questions about the overbreadth of the statute, which,
00:23:05 11 in the decisions that we cited and the plaintiffs did not
00:23:10 12 cite, were resolved in favor of the defendants, and again --
00:23:15 13 and limiting the sweep of the statute.

00:23:18 14 THE COURT: Right. Okay. Thank you.

00:23:21 15 Ms. George, I apologize, I --

00:23:29 16 MS. GEORGE: That's okay. I like Ms. Ione. It works
00:23:31 17 for me. Thank you, Your Honor.

00:23:33 18 THE COURT: It has been about about a year since you
00:23:35 19 have been here. I forgot.

00:23:37 20 MS. GEORGE: All good. My involvement, my statements
00:23:40 21 here will be very short. I have deferred to the State for
00:23:44 22 these arguments. I don't want to belabor the point. My
00:23:47 23 comments will be very short with regard to those statements
00:23:50 24 made about the prosecutor's specific threats. I would say,
00:23:53 25 there have been no specific threats.

00:23:56 1 The statements have been focused on this e-mail. I
00:23:58 2 would point out that all that has been referred to is the
00:24:02 3 prosecutor's response. The prosecutor made no specific
00:24:06 4 threats. In those cases that have been cited in the Attorney
00:24:10 5 General's brief, we are talking about statements made by
00:24:13 6 prosecuting authorities where they have reached out to a
00:24:16 7 defendant and said, "Cease and desist what you are doing or
00:24:19 8 we will prosecute you. You are at risk. Stop it."

00:24:23 9 What we have here is a situation where a couple of
00:24:26 10 referrals were made to the Prosecutor's Office. One of them
00:24:28 11 was prosecuted. There was another case where the prosecutor
00:24:31 12 did nothing. The prosecutor has no obligation to respond,
00:24:35 13 and they didn't. They had it. We didn't do anything. It
00:24:39 14 was an attorney who reached out and they said to a deputy
00:24:44 15 prosecutor, sorry to pester you. This case is certainly --
00:24:47 16 another case is circling back and the judge will -- well, to
00:24:51 17 be specific, "Sorry, to pester you. My other Bainbridge
00:24:56 18 Island case is circling back around next week. I know the
00:24:59 19 judge will want a status update on whether the charges will
00:25:02 20 be filed or not. Do you happen to have an idea?" Somebody
00:25:07 21 reached out and said, "What are you going to do?" The deputy
00:25:10 22 prosecutor said, "I haven't made a decision. If something
00:25:12 23 happens, I might do something." That is not a specific
00:25:14 24 threat.

00:25:15 25 What the statute requires when we are talking about this

00:25:18 1 is, is there a genuine possibility of prosecution under the
00:25:21 2 law.

00:25:22 3 THE COURT: There has to be a concrete threat.

00:25:24 4 MS. GEORGE: The prosecutor has to articulate a
00:25:27 5 specific warning or threat to prosecute. There has to be
00:25:30 6 also the history of past prosecution or an action under the
00:25:35 7 specific statute. That has never been addressed here.
00:25:37 8 Never, in any of the briefing. There has been no showing of
00:25:41 9 this Prosecutor's Office ever taking an action under the
00:25:44 10 statute. It is a vacuum under this litigation. It is a hole
00:25:47 11 in this case that hasn't been shown and can't be shown.

00:25:51 12 THE COURT: You guys are two ships passing in the
00:25:54 13 night. Professor deals with the core issue of the
00:25:59 14 constitutionality. The defendants are relying, perhaps
00:26:09 15 persuasively, on the limitations of the Court to address this
00:26:14 16 issue.

00:26:15 17 Mr. Volokh.

00:26:16 18 MR. VOLOKH: Thank you very much. Let me turn to
00:26:18 19 some of these procedural issues in the order that were
00:26:21 20 raised. First, is the jurisdiction over the Washington
00:26:24 21 Attorney General. The leading decision on this, district
00:26:27 22 court decision from this very courtroom, Judge Robart, is
00:26:31 23 Skokomish Indian Tribe vs Goldmark. It interprets the
00:26:36 24 statute that describes the authority of the Washington
00:26:41 25 Attorney General which says not just that the Attorney

00:26:44 1 General may prosecute upon the request of, but upon the
00:26:47 2 request of or with a concurrence of, among other things,
00:26:52 3 county prosecutors, and the Court concluded that was
00:26:55 4 sufficient to provide jurisdiction. That case is 949 F.Supp.
00:27:00 5 2d, 1168. It is from 2014 from this district. That's what
00:27:06 6 we have to say about jurisdiction over the Attorney General,
00:27:08 7 although, of course, our case can proceed if we have
00:27:10 8 jurisdiction over either the Attorney General or the County
00:27:13 9 Prosecutor's Office.

00:27:14 10 Now, as to the standing required to show sufficient threat
00:27:19 11 of enforcement, California Pro-Life Council is the leading
00:27:23 12 precedent on that, we think, in the Ninth Circuit from 2003,
00:27:27 13 although it is also echoed in the Wolfson vs Brammer case in
00:27:31 14 2010. California Pro-Life Council makes clear it doesn't
00:27:35 15 have to be a specific threat as to this particular defendant.
00:27:37 16 Quoting favorably the Seventh Circuit the Court says, "The
00:27:40 17 threat is latent in the existence of the statute if the
00:27:43 18 statute arguably covers the person's speech." In that case,
00:27:47 19 the person can take a hold-your-tongue-and-challenge-now
00:27:52 20 approach, which is ultimately more respectful of the judicial
00:27:55 21 process and of the law. To say, I am not going to say
00:27:59 22 something that might be illegal, I am going to try to get
00:28:02 23 adjudication of my rights under this.

00:28:05 24 This is not the standard rule in other areas. It is
00:28:09 25 the rule for First Amendment purposes because of the threat

00:28:11 1 that overbroad statutes can have a chilling effect. That is
00:28:14 2 relevant and substantive, but under the California Pro-Life
00:28:18 3 Council it is also relevant to the standing point.

00:28:21 4 We think there is ample standing here. Partly that is
00:28:26 5 because of the very existence of the statute. Also partly
00:28:29 6 because of the e-mail. To be sure, a response to the defense
00:28:34 7 lawyer's question, that's one way prosecutors communicate
00:28:38 8 their intention. The e-mail has to do with case report
00:28:41 9 I-17000145. That is the police report. Your Honor can take
00:28:47 10 judicial notice. If you want a copy of it, we have copies.
00:28:50 11 That is clearly a report that is about a claim of
00:28:53 12 cyberstalking. It is not about a claim of violation of the
00:28:55 13 protective order. It is a claim, because at the time the
00:28:59 14 challenge on that happened, there had been no protective
00:29:02 15 order. This was a cyberstalking referral by the police
00:29:05 16 department. They found there was probable cause to conclude
00:29:08 17 Mr. Rynearson was cyberstalking, referred to the prosecutor,
00:29:13 18 and when asked what was going on, the prosecutor says, "I am
00:29:14 19 not formally declining, but I am not going to charge it at
00:29:17 20 this time. I am going to sit on it with the hope
00:29:19 21 Mr. Rynearson abides by the NCO. If I get any future
00:29:23 22 referrals" -- I take it referrals for violation of the
00:29:28 23 cyberstalking, the issue involved -- "I will revisit the
00:29:31 24 charging decision."

00:29:32 25 We think a reasonable, law abiding person that

00:29:34 1 doesn't want to get arrested, doesn't want to get prosecuted,
00:29:36 2 is asking is it safe for me to speak now or should I hold my
00:29:40 3 tongue and challenge it in court, would say, you know, there
00:29:44 4 is a sufficient and reasonable threat to me of enforcement of
00:29:48 5 the cyberstalking statute for any speech that I may -- might
00:29:53 6 engage in that might arguably be seen as intended to
00:29:56 7 embarrass and be repeated. Those are the only elements of
00:29:58 8 that in the electronic communication that is under the
00:30:03 9 statute.

00:30:03 10 Now, as to the question of whether a state court might
00:30:07 11 kind of interpret the statute more broadly, that is a
00:30:10 12 separate abstention question not raised in the brief. The
00:30:13 13 leading precedent is City of Houston vs Hill from 1987 where
00:30:18 14 one of the things the court specifically said is abstention
00:30:22 15 is not encouraged in constitutional and First Amendment
00:30:25 16 cases -- that was a First Amendment case -- because the
00:30:28 17 speakers are entitled to go to federal court and have their
00:30:32 18 federal rights adjudicated.

00:30:35 19 Finally, as to the Younger abstention, there is a
00:30:41 20 state proceeding for sure. The state proceeding is not
00:30:46 21 brought by the parties here. We are not seeking to enjoin
00:30:49 22 the parties to that proceeding. We are not seeking to enjoin
00:30:53 23 Mr. Moriwaki. We are not seeking to enjoin the Court or any
00:30:58 24 of the other witnesses or whatever else are issues. All of
00:31:01 25 the precedents that have been cited, to our knowledge the

00:31:05 1 precedents in Younger, have to do with that kind of
00:31:10 2 interference in state proceedings. We don't think there is
00:31:12 3 such a thing.

00:31:12 4 Now, it is true the state proceeding is based on a civil
00:31:16 5 statute where one of the predicates, and the state judge
00:31:19 6 found there was another statute provided a predicate, is the
00:31:22 7 statute here. Under Washington's Collateral Bar Rule,
00:31:26 8 Mr. Rynearson has to comply with that order regardless of
00:31:31 9 whether -- of whether he thinks the statute is invalid.
00:31:38 10 Ultimately if hypothetically there is a contempt proceeding,
00:31:41 11 we think the Collateral Bar Rule would likely prevent us
00:31:45 12 raising the constitutionality of the statute as a challenge.

00:31:48 13 In any event, that has to do with hypothetical future
00:31:52 14 event proceedings. Younger has to do with injunctions
00:31:54 15 dealing with current proceedings. We think this injunction
00:31:57 16 would not interfere with those proceedings. It wouldn't
00:32:00 17 enjoin anybody. We think it would have a powerful persuasive
00:32:04 18 precedential effect. That is an interference. If the judge
00:32:08 19 says, I am persuaded by the federal district court's
00:32:11 20 reasoning, that's not federal district court interfering with
00:32:16 21 the proceeding. It is providing useful input.

00:32:21 22 THE COURT: It is a difficult position to be in the
00:32:30 23 case of the federal court to seem like poaching in a state
00:32:40 24 proceeding that is -- it is not proceeding right now. There
00:32:53 25 is good reason why state courts should have the first crack

00:33:10 1 at their statute. Federal courts are the keepers of the
00:33:17 2 Constitution, the United States Constitution. We take that
00:33:22 3 very seriously.

00:33:26 4 Mr. Roberts, Ms. George, do you have anything to add?

00:33:31 5 MR. ROBERTS: Your Honor, if I may be heard briefly
00:33:33 6 on the jurisdiction issue. I frankly haven't read the
00:33:38 7 Skokomish Indian Tribe case they are referring to.

00:33:41 8 THE COURT: It intersected the Skokomish hunting
00:33:46 9 decision that I made just a couple months ago. That is why I
00:33:49 10 am familiar with Goldmark.

00:33:52 11 MR. ROBERTS: Got you. I don't mean to turn myself
00:33:55 12 into a witness here. We certainly don't argue that the
00:34:01 13 concurrence language isn't there. That is just not the way
00:34:05 14 it works. I mean, the prosecutors have the jurisdiction.
00:34:10 15 Under the law could we say to them, hey, could we have some
00:34:14 16 jurisdiction, and they concur. Yes, absolutely. Again, that
00:34:18 17 is a contingent future event that hasn't happened. There is
00:34:22 18 no indication that it will. That is the real test here, is
00:34:26 19 there a threat? Practically speaking, it never looks that
00:34:30 20 way. If you filed the public records request and got all the
00:34:34 21 letters confirming jurisdiction and all the cases, they
00:34:37 22 always go from the county prosecutors to the Attorney
00:34:41 23 General's Office. We don't have jurisdiction until they say,
00:34:46 24 "Why don't you take it."

00:34:48 25 Thank you, Your Honor.

00:34:50 1 THE COURT: Anything further, Ms. George?

00:34:52 2 MS. GEORGE: No.

00:34:53 3 MR. VOLOKH: I want to mention one thing that hasn't

00:34:56 4 come up, for the sake of completeness. I believe it was in

00:35:00 5 the County's reply to the motion to dismiss. They raise the

00:35:05 6 prosecutorial immunity question. They argue attorney fees

00:35:10 7 are barred by prosecutorial immunity. Turns out there is

00:35:15 8 precedent on that. The leading case is Supreme Court of

00:35:16 9 Virginia vs Consumers Union of the U.S., 446 U.S. 17, 1980.

00:35:22 10 There is also a follow-up circuit court decision from the

00:35:26 11 Tenth Circuit in Wilson vs Stocker, 819, F.2d, 1987. They

00:35:35 12 make clear that prosecutorial immunity does not extend to

00:35:40 13 either declaratory judgment or injunctions or attorney fees.

00:35:42 14 It only extends to damages, which we are not claiming. We

00:35:45 15 wanted to mention that, for the sake of completeness.

00:35:48 16 THE COURT: Thank you.

00:35:49 17 I'll have a decision out in about two weeks. Thank you

00:35:58 18 for your written materials, your oral presentations. I am

00:36:12 19 questioning whether we got everybody up and dressed for this.

00:36:19 20 There wasn't the direct, head-on debate on the

00:36:28 21 constitutionality of this statute that I wanted to invite.

00:36:35 22 Little bit of a rope-a-dope. I see why you are arguing that

00:36:44 23 way. We have encountered Younger abstention and Ex parte

00:36:54 24 Young in the past, and we will ferret out your argument and

00:37:02 25 render a decision in a couple of weeks.

00:37:04

1

Thank you. Have a great weekend.

00:37:16

2

(The proceedings adjourned.)

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

C E R T I F I C A T E

I certify that the foregoing is a correct transcript from
the record of proceedings in the above-entitled matter.

/s/ *Angela Nicolavo*

**ANGELA NICOLAVO
COURT REPORTER**